

Quantity Purchase Agreement With The State Of Indiana

Vendor: ELECTIONS SYSTEMS & SOFTWARE I
Remit to: 11208 JOHN GALT BLVD
OMAHA NE 68137

Name and Address of Vendor: ELECTIONS SYSTEMS & SOFTWARE I
Cntct: Robb McGinnis
11208 JOHN GALT BLVD
OMAHA NE 68137

Qty Purchase Agreement QPA Number	Page
0000000000000000000000009931	1 of 1
Requisition Nbr.:	ASA6-6-25
Effective Date:	09/01/2005
Expiration Date:	08/31/2006
Agency Number:	
Facility:	All State Agencies
Vendor Federal ID:	470617567
Vendor Telephone Nbr:	402/593-0101--
Name Of Contact Pers:	Robb McGinnis
FAX Number:	

In accordance with your bid, submitted in response to the above referenced solicitation, the Vendor agrees that the Indiana Department of Administration, Procurement Division, has the option to purchase the items listed below under the terms of this agreement.

The Vendor agrees to charge these prices for any products ordered on any QPA release received after the expiration of the QPA but issued prior to the expiration date. The quantity listed herein is an estimate of the requirements. The state may order substantially more or substantially less pursuant to the terms of this agreement.

Orders are to be delivered only upon receipt of properly approved Quantity Purchase Award Release.

Line Number	Quantity	UNIT	Article and Description	Unit Price
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This is an award of a Quantity Purchase Agreement for Voting Systems, Software, Training and Support.

QPA can be mutually renewed yearly for three additional years.

The vendor agrees to charge these prices for any products ordered on any QPA release received after the expiration date, but issued prior to the expiration date, and postmarked no later than 14 business days after the QPA's expiration date.

Quantities are estimates and could be more or less.

See attached contract for pricing.

1	0.00 EA	000000000100014787	Voting Stations,Software,Training Services	0.0000
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The following UN/CEFACT Unit of Measure
Common Codes are used in this document:
EA Each

Signature of Purchasing Officer <i>Mark L. Mayoral, CPA</i>		Typed Name <i>Mark Hempel</i>		Signature Of Approval Office Of the State Attorney General <i>Signature on file</i>	
		Date Signed <i>8/9/05</i>		Typed Name	
Authorized Signature <i>Deuse Dutton-Rivera</i> <i>CPA</i>		Indiana Department Of Administration Procurement Division 402 West Washington Street, Rm W468 Indianapolis, Indiana 46204 Telephone: (317) 232-3053		Date Signed	

QUANTITY PURCHASE AGREEMENT BETWEEN STATE OF INDIANA AND ELECTION SYSTEMS & SOFTWARE, INC.

This Quantity Purchase Agreement ("Agreement") is made by and between the Indiana Election Division and Indiana Secretary of State through the Indiana Department of Administration ("Department") for the benefit of all counties in the State of Indiana (political subdivisions) and Election Systems & Software, Inc. ("ES&S").

RECITALS

WHEREAS, Indiana statute establishes an Election Administration Assistance Fund ("EAAF") pursuant to IC 3-11-6.5 from which counties may seek reimbursement for the purchase, lease-purchase or lease of voting systems;

WHEREAS, the Department may award quantity purchase agreements to vendors to establish the maximum price at which voting systems will be offered for sale and sold to counties;

WHEREAS, the Department entered into contract negotiations with ES&S as a special procurement after requesting and evaluating a proposal from ES&S;

NOW, THEREFORE, for the mutual promises contained herein, the parties agree:

AGREEMENT

1. TERM

This contract shall be for a period of one year. It shall commence on execution of this contract and shall terminate no later than one year after the date of execution of this contract.

2. PRICES

ES&S shall provide to counties in Indiana the voting system identified in this Agreement, including any of the products and services associated with the ES&S's voting system identified in this Agreement, at a price no more than the price stated herein. If ES&S provides for the payment of installments over time, the terms for payment may not provide for the payment of interest on the installments during a period of time beginning with the execution of ES&S's contract with county or counties and ending when the county receives, or all the counties in a multi-county agreement receive, a final reimbursement payment from the EAAF. The purpose of this provision is to prevent the payment of interest by a county due to a delay in reimbursement to a county or counties from the EAAF.

3. PRODUCT DESCRIPTION AND PRICING TABLES

A) Product Descriptions for the iVotronic, Hardware Version 1.0, Firmware Version 9.0.0.0:

- 1) The Standard iVotronic Package with Hardware Version 1.0, Firmware Version 9.0.0.0: The Standard iVotronic Package comes with a voting booth, a Personalized Electronic Ballot Cartridge ("PEB"), and is capable of textual ballot presentation in both the English and the Spanish languages. The iVotronic is a Direct Recording Electronic ("DRE") touchscreen device used in the text-based display and recording of election day data. Each iVotronic unit weighs less than fifteen pounds and serves as a stand-alone voting system. The iVotronic is activated for voting with a PEB, a battery-backed RAM storage device with an infrared window that is inserted into the iVotronic voting unit to transmit ballot data. A color 15" color LCD display will present information, including ballot selections, to the user while a touch-screen overlay will provide the user with a means for communicating back to the system by pressing on the screen. The iVotronic uses audio-visual prompts to ensure correct use of the Voter Terminal by voters.
- 2) ADA iVotronic Package with Hardware Version 1.0, Firmware Version 9.0.0.0. The ADA iVotronic Package comes with a voting booth, a PEB, and is capable of presenting audio ballot information to the voter in both the English and the Spanish languages. In addition, the ADA iVotronic comes with an external key-set (with Braille embossing) coupled with an audio processor to allow the system to provide verbal instructions to the visually impaired voter and permit the voter to navigate the ballot and record votes by pushing keys on the key-set.
- 3) iVotronic Communications Pack with Modem. This is a combination of devices in single container with a modem to transmit election results via a telephone connection and a thermal printer capable of printing zero reports prior to the poll opening as well as final results after the polls are closed. One iVotronic Communications Pack with Modem is capable of operating with all of the iVotronic units in a single precinct.
- 4) iVotronic Printer Pack. This is simply a thermal printer capable of printing zero reports prior to the poll opening as well as final results after the polls are closed. One iVotronic Printer Pack is capable of operating with all of the iVotronic units in a single precinct.

iVOTRONIC DIRECT RECORDING SYSTEM PRICING

ITEM	PRICE¹
Standard iVotronic DRE Touch Screen Package including: Standard iVotronic with Booth & PEB English and Spanish Language 15" Terminal	\$2,995 each

iVotronic DRE Touch Screen ADA System ADA iVotronic with Booth & PEB English and Spanish Language 15" Terminal	\$3,495 each
iVotronic Communications Pack with Modem	\$1,200 each
iVotronic Printer Pack	\$800 each
Annual Hardware Maintenance Fee for iVotronic: Fee begins starting with the second year following original purchase of the software	\$95 per unit for 1-49 units \$85 per unit for 50-100 units \$80 per unit for 101-200 units \$75 per unit for 201-300 units \$70 per unit for 300 or more units
Annual Firmware Maintenance Fee for iVotronic: Fee begins starting with the second year following original purchase of the software	\$30 per unit

¹All pricing includes a one (1) year Hardware and Software Warranty and Support and Maintenance.

B) Product Description for Optical Scan Units:

1. The Model 100 Precinct Tabulator, Firmware Version 5.1.0.0. (Model 100). The Model 100 comes with a ballot box, PCMCIA memory card, and a modem: This Model 100 is a precinct-based optical scan system that scans, interprets and records optical scan ballot and drops the ballot into a secured ballot box. The Model 100 weighs nineteen pounds, seven ounces, and operates on standard, 110VAC electrical service. The Model 100 is equipped with an on-board power supply, charging circuit and a sealed lead-acid battery for uninterruptible power supply. The Model 100 is programmed via a battery-backed PCMCIA memory card. The Model 100 has a 40-character LCD screen and audible signals used to communicate the status of the Model 100 to the voter and to precinct officials. In addition to its internal thermal printer, the Model 100 has an additional output port for an external printer. The Model 100 can be programmed to automatically return ballots that are over-voted, blank, or that have been improperly read. The Model 100 also comes equipped with a modem for remote transmission of election results. Election results can also be delivered to a central location via a precinct counter memory device. In either case a PC-based network at the central location is used with the Model 100 for reading, accumulating, reporting and displaying election results.

The Model 100 Memory Card is a standard battery backed SRAM PCMCIA card. The Memory Card is secured within a sealed compartment behind the unit's locked front panel. The vote tally and audit logs are stored on the Memory Card, and all error and major events are recorded with the date and time from the system's real-time clock. Audit trails are redundant- written onto the Memory Card and in redundant memory maintained on the Model 100. In the event of a machine failure, the card and its stored data can be retrieved and added to a backup Model 100. The card's lithium battery is rated for eight years.

The Model 100 comes with a plastic ballot box. The ballot box is a portable unit weighing approximately thirty-five pounds. The ballot box is twenty-one inches wide; twenty-five inches deep (front/back handles inclusive); and twenty inches high (wheelbase inclusive). The Model 100 can also come with a steel ballot box is a portable unit weighing approximately ninety pounds. The ballot box is twenty-one inches wide; twenty-four inches deep (with front/back carrying handles); and thirty-eight inches high (wheelbase inclusive). The steel ballot box has four, three-inch caster wheels-the front two designed to swivel for ease of transport.

2. Model 650 Central Tabulator, Firmware Version 2.0.1.0 (Model 650). The Model 650 is a stand alone self-contained optical scanner that uses an automatic ballot feeder to process and tabulate 11", 14", 17" and 19" ballots. The Model 650 identifies overvotes, write-ins, blank and mutilated ballots during ballot processing. Controls used by the equipment operator are located on the front control panel that allow the operator to start operation, stop operation, print reports and store data to disk. The Model 650 is equipped with a zip drive for the transfer of data files and has a 128 MB solid state hard drive and 133 MHz Central Processing Unit (CPU). The Model 650 is equipped with a backup and recovery subsystem that provides for the retention of data in the event of a power failure or mechanical malfunction. The Model 650 provides for results reporting directly from the Model 650 or from ES&S's Unity Election System Election Reporting System Software. The Model 650 is capable of producing grand total, precinct-level, and audit record reports. The Model 650 measures 24" high by 28" wide by 23" deep and weighs approximately 150 pounds.

OPTICAL SCAN SYSTEMS PRICING

ITEM	PRICE¹
Model 100 Optical Scan Precinct Counter with Ballot Box, PCMCIA Memory Card, and Modem	\$5,300 each
Model 650 High Speed Central Counter with Start up Kit, Dust Cover, Ballot Jogger and Ballot Box	\$45,000 each

Annual Hardware Maintenance Fee for Model 100: Fee begins starting with the second year following original purchase of the software	\$195 per unit
Annual Firmware Maintenance Fee for Model 100: Fee begins starting with the second year following original purchase of the software	\$30 per unit
Annual Hardware Maintenance Fee for Model 650: Fee begins starting with the second year following original purchase of the software	\$2600 per unit
Annual Firmware Maintenance Fee for Model 650: Fee begins starting with the second year following original purchase of the software	\$295 per unit

¹All pricing includes a one (1) year Hardware and Software Warranty and Support and Maintenance.

C) Product Description for Application Software:

Application Software: Unity 2.5 consisting of the following components: Data Acquisition Manager (DAM), version 6.0.0.0. The application software will operate with both the iVotronic and optical scan systems. The Unity Version 2.5 provides an election administrator with tools to tabulate and report primary or general elections. Each election in the Unity Version 2.5 environment is kept in its own database. The software operates with the iVotronic, Model 100, and Model 650 described herein.

APPLICATION SOFTWARE PRICING

ITEM	PRICE¹
<u>Purchase Price for Unity 2.5 Application Software</u>	
Data Acquisition Manager	\$ 2,500
Election Reporting Manager	\$ 8,000
Annual fee for Software Support/Maintenance: Fee begins after the second year following original purchase of the software	20% of original purchase price of the application software

¹The purchase price is a one time charge to license and use the identified software and covers software support and maintenance for one year.

4. ADDITIONAL TERMS AND AGREEMENTS

Product Compliance with Indiana Statute and Notice of Decertification or Judgment

Voting system equipment provided by ES&S under a contract with a county or counties pursuant to this quantity purchase agreement must be certified by the Indiana Election Commission for use in Indiana elections pursuant to IC 3, and shall be as described in the response to request for proposals of ES&S which is incorporated by reference and made a part hereof.

In addition, any contract between ES&S and a county or counties pursuant to this quantity purchase agreement voting system must describe the voting system with particularity, including a description of the firmware and software versions of the voting system. Further, prior to the execution of a contract with a county or counties pursuant to this quantity purchase agreement, a ES&S shall be required to submit an affidavit, under oath, attesting to the fact that the voting system identified in the proposed contract has been certified by the Indiana Election Commission for use in Indiana elections pursuant to IC 3. The affidavit must include a copy of the proposed contract with the county.

Furthermore, any contract between ES&S and a county or counties pursuant to this quantity purchase agreement must provide that ES&S shall provide written notice to the county or counties and to the Indiana election division within seven days of the occurrence of either of the two events:

1. A voting system marketed or sold, or formerly marketed or sold by ES&S has been decertified in any jurisdiction in the United States. The notice shall identify the voting system subject to the decertification, the jurisdiction that decertified the voting system, the reason for the decertification, and the date of decertification.
2. ES&S has a judgment entered against it for violating a contractual obligation owed to a customer involving its products or services. The notice shall identify the name, address and phone number of the customer and include a copy of the judgment.

County Contracts

All counties who purchase products listed herein from ES&S shall assume all payment obligations, and any and all other contractual obligations, to ES&S under separate agreement between ES&S and the county. The Department assumes no obligation to pay for any of the product(s) purchased by any county pursuant to this Agreement or otherwise. ES&S shall have no interest, claim or cause of action under this Agreement in its own right, or as a third-party beneficiary under a contract with a county, against the State of Indiana or any of its departments, divisions, subdivisions, officials, representatives or employees, for payment of any funds from the EAAF established under IC 3-11-6.5 or from any other state fund.

Nothing in this Agreement shall preclude a county from entering into a multi-county purchasing agreement with another county, or other counties, to purchase voting equipment from ES&S, or from financing. Furthermore, nothing in this Agreement shall preclude a county or counties from financing a purchase from ES&S through the Indiana Bond Bank.

Necessary Approvals

This Agreement is subject to the approval of the signatories hereto, the appropriation and availability of funds, and compliance with Indiana Law.

Assignment

ES&S shall not assign or subcontract the whole or any part of this Agreement without the Department's prior written consent.

Successors and Assignees

ES&S binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, ES&S shall not assign, sublet or transfer interest in this Agreement without the prior written consent of the Department.

Authority to Bind

The signatory to this Agreement for ES&S represents that he/she has been duly authorized to execute contracts on behalf of ES&S designated above and has obtained all necessary or applicable approval from the home office of ES&S to make this Agreement fully binding upon ES&S when his/ her signature is affixed and is not subject to home office acceptance when accepted by the Department and executed by the signatories to this Agreement.

Compliance with Laws

ES&S agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and ES&S to determine whether the provisions of the contract require formal modification.

a. ES&S and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If ES&S is not familiar with these ethical requirements, ES&S should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<[<http://www.in.gov/ethics>](http://www.in.gov/ethics)>>>. If ES&S or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate

this contract immediately upon notice to ES&S. In addition, ES&S may be subject to penalties under Indiana Code § 4-2-6-12.

b. ES&S certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, ES&S agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to ES&S. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until ES&S is current in its payments and has submitted proof of such payment to the State.

ES&S warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, ES&S agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement.

If a valid dispute exists as to ES&S's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to ES&S, ES&S may request that it be allowed to continue, or receive work, without delay. ES&S must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

ES&S warrants that ES&S and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and grounds for immediate termination of the Agreement and denial of further work with the State.

ES&S hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

ES&S agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar ES&S from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.

Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

1. The individual executing this Agreement;
2. An individual who has an interest of three percent (3%) or more of ES&S, or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this Agreement without recourse by ES&S if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if ES&S gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Agreement consistent with an opinion of the Commission obtained under this section.
- D. ES&S has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that ES&S knows or reasonably could know.

Debarment and Suspension

ES&S certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of ES&S.

Disputes

Should any disputes arise between the parties to this Agreement with respect to this Agreement, ES&S and the Department agree to act immediately to resolve any disputes. Time is of the essence in the resolution of disputes.

This dispute resolution provision applies to the terms of this Agreement, including the pricing of the products and services indicated herein, and also applies to any dispute that may arise out of a contract between ES&S and a county and does not limit any remedy a county may have under any contract with ES&S.

ES&S agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. If the Department and ES&S cannot resolve a dispute within ten (10) working

days following notification in writing by either party of the existence of a dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to ES&S and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and binding unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. Upon the issuance of a reconsideration, or if no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration. After completion of arbitration, or if the parties do not agree to arbitration, the dispute may be submitted to an Indiana court of competent jurisdiction.

Drug-Free Workplace Certification

ES&S hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. ES&S will give written notice to the Department within ten (10) days after receiving actual notice that ES&S or an employee of ES&S has been convicted of a criminal drug violation occurring in ES&S workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, ES&S hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by ES&S and made a part of the contract or agreement as part of the contract documents.

ES&S certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in ES&S workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform employees of (1) the dangers of drug abuse in the workplace; (2) ES&S policy of maintaining a Drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify ES&S of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a Drug-free workplace through the implementation of subparagraphs (A) through (E) above.

Governing Laws

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

Independent Contractor Status

Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

ES&S shall be responsible for providing all necessary unemployment and workers' compensation insurance for ES&S's employees.

Funding

ES&S shall have no interest, claim or cause of action under this Agreement in its own right, or as a third-party beneficiary under a contract with a county, against the State of

Indiana or any of its departments, divisions, subdivisions, officials, representatives or employees, for payment of any funds from the EAAF established under IC 3-11-6.5 or any other state fund. The EAAF established under IC 3-11-6.5 is established to reimburse a county pursuant to the statutory provisions outlined in IC 3-11-6.5 and any other applicable statutory and administrative procedure authorized by law.

Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, ES&S and its subcontractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement. ES&S shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

ES&S understands that the State is a recipient of federal funds. Pursuant to that understanding, ES&S and its subcontractor if any, agree that if ES&S employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, ES&S will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. ES&S shall comply with Section 202 or Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

Notice to Parties

Whenever any notice, statement or other communication shall be sent to the State or ES&S, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

J. Bradley King and Kristi Robertson
Co-Directors, Indiana Election Division
Indiana Government Center South
302 West Washington Street, E 204
Indianapolis, Indiana 46204
Ph. 317.232.3939/Fax: 317.233.6793

Indiana Secretary of State Todd Rokita
201 Statehouse
Indianapolis, IN 46204
317.232.6531

B. Notices to ES&S shall be sent to:

Eric A. Anderson
General Counsel
Elections Systems & Software, Inc.
11208 John Galt Blvd.
Omaha, NE 68137
Ph. 800.247.8683/Fax. 402.970.1297

Order of Precedence

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (a) This Agreement, (b) State RFP to ES&S; and (c) ES&S's Response to RFP dated March 21, 2005.

Payments

All counties who purchase products listed herein from ES&S shall assume all payment obligations, and any and all other contractual obligations, to ES&S under separate agreement between ES&S and the county. The Department assumes no obligation to pay for any of the product(s) purchased by any county pursuant to this Agreement or otherwise.

Penalties/Interest/Attorney's Fees

The Department will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-5, and IC 34-13-1-6.

Renewal Option

This Agreement may be renewed under the same terms and conditions subject to the written approval of ES&S as well as the written approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal to this Agreement may include an increase in the prices quoted in this Agreement in an amount not to exceed 5%.

Taxes

The Department, as a Department of the State of Indiana, is exempt from state, federal, and local taxes and the Department shall provide proof of such exemption to ES&S upon request. The Department will not be responsible for any taxes levied on ES&S as a result of this Agreement.

Termination for Default

With the provision of thirty (30) days notice to ES&S, the State may terminate this Agreement in whole or in part, if ES&S **fails to** correct or cure any breach of this Agreement. The remedy contained in this clause shall be in addition to any other remedy specified in this Agreement or otherwise provided by law.

Nothing contained in this clause shall be construed to limit the rights and remedies of a county under a contract with ES&S.

Ethics Clause

ES&S and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If ES&S is not familiar with these ethical requirements, ES&S should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If ES&S or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to ES&S. In addition, ES&S may be subject to penalties under Indiana Code § 4-2-6-12."

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

The rest of this page has been left blank intentionally.

In Witness Whereof, ES&S and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

Election Systems & Software, Inc.

By: [Signature]
Printed Name: Tom CBrad
Title: CFO
Date: 7-22-05

Indiana Secretary of State

[Signature]
Printed Name: Todd Rokita
Date: 7/26/05

State of Indiana Agency:

[Signature]
J. Bradley King
Co-Director
Indiana Election Division
Date: 7-25-05

[Signature]
Kristi Robertson
Co-Director
Indiana Election Division
Date: 7/25/05

Information Technology Oversight Commission

[Signature]
Printed: N/A
Title:
Date:

Department of Administration

[Signature]
Earl A. Goode
Commissioner
Date: 8/9/05

State Budget Agency

[Signature]
Charles E. Schalliol
Director
Date: 8-15-05

**APPROVED as to Form and Legality:
Office of the Attorney General**

[Signature]
Stephen Carter
Attorney General
Date: 8-30-05